



JAMES A. NOYES, Director

COUNTY OF LOS ANGELES

DEPARTMENT OF PUBLIC WORKS

"To Enrich Lives Through Effective and Caring Service"

900 SOUTH FREMONT AVENUE
ALHAMBRA, CALIFORNIA 91803-1331
Telephone: (626) 458-5100
www.ladpw.org

ADDRESS ALL CORRESPONDENCE TO:
P.O. BOX 1460
ALHAMBRA, CALIFORNIA 91802-1460

IN REPLY PLEASE

REFER TO FILE: **C-3**
A707

August 5, 2003

TO: Each Supervisor

FROM: James A. Noyes
Director of Public Works

INTERIM REPORT—BOARD MOTION OF JULY 22, 2003, SYNOPSIS 16 LA VIÑA MELLO-ROOS AUDIT (COMMUNITY FACILITIES DISTRICT NO. 7)

On July 9, 2003, your Board received an audit report from the Auditor-Controller regarding the La Viña Mello-Roos Community Facilities District (Community Facilities District No. 7 or "CFD No. 7"). The audit revealed that the developer was reimbursed for items ineligible under the law, for unsupported and/or duplicate requests for reimbursement, and for requests in excess of the caps established in the agreement between the developer and the County. As requested by your Board on July 22, 2003, we have met with County Counsel, Auditor-Controller, Chief Administrative Officer, and Regional Planning to investigate the issues specified below.

LEGAL ACTIONS AGAINST THE DEVELOPER OF THE LA VIÑA PROJECT

In one of your actions, your Board directed County Counsel to report back to you on possible legal action the County might take against the La Viña developer based upon the results of the audit. County Counsel advises that the F&A Agreement entered into on March 5, 1998, discusses the legal rights and obligations of the County and the developer. The F&A Agreement sets forth the public facilities that are eligible for cost reimbursement through Mello-Roos bond proceeds.

County Counsel continues to investigate the facts underlying this matter in conjunction with the involved County departments in order to determine what legal actions may be available against the Developer. Further, as discussed below, the developer is in the process of providing more information in response to the audit, which should provide additional facts pertinent to County Counsel's investigation. Thus, County Counsel will finalize its review of this matter by September 15, 2003.

PENALTIES THAT CAN BE IMPOSED UPON THE DEVELOPER

Your Board also requested that you be advised what penalties might be imposed upon the developer for its actions. There are no penalties under the Mello-Roos Act or any other authority that would be applicable to the developer.

RECOMMENDATIONS CONCERNING THE AUDITOR-CONTROLLER'S AUDIT

Public Works agrees to all ten recommendations contained in the Auditor-Controller's report and has implemented the corrective actions specified in the report. Those specific recommendations directed to the Mello-Roos Task Force are also being executed.

DEVELOPER'S COMMENTS TO THE BOARD REGARDING THE AUDIT

At its July 22, 2003, meeting, the Board requested the Auditor-Controller respond to comments made by a representative of Brookfield Homes regarding the La Viña Mello-Roos audit. In general, the representative took exception to certain findings in the audit. On Thursday, July 24, 2003, the Auditor-Controller delivered to the developer documentation supporting the audit findings. Staff from Public Works and the Auditor-Controller met with the developer on July 28, 2003, to discuss the audit findings. Following is a summary of our discussions with the developer.

- **AMENDMENT TO THE F&AA**

The Funding and Acquisition Agreement (F&AA) required Public Works and the developer to formally amend the F&AA to include any new expenditure category. The Auditor-Controller found in the audit that we did not formally amend the F&AA to include legal expenditures and expenditures related to the formation of the Communities Facilities District (CFD), but we should have. At the July 22 Board meeting, the developer stated that an Exhibit to a July 1999 Board motion, which authorized the sale of Special Tax bonds, listed legal and CFD formation expenditures. However, the Exhibit was not actually included as part of the Board motion, although Public Works and the developer stated it was their intent to do so.

- **SOFT COSTS EXCEEDING CAPS**

The F&AA established caps on soft costs (e.g., engineering and consulting costs.) The Auditor-Controller found in the audit that we did not monitor the caps and reimbursed the developer in excess of the soft cost cap limits for all five soft cost cap categories in the F&AA. At the July 22 Board meeting, the developer stated that he would not have exceeded soft costs caps if the Auditor-Controller had based its calculations on the revised Exhibit in the July 1999 Board motion. However, as previously noted, the July 1999 Board motion did not amend the F&AA. Further, in the July 28 meeting, after review of supporting documentation, the developer agreed that he exceeded the soft cost caps as delineated in the F&AA. The developer and our department stated that they believed the soft cost caps could be adjusted by mutual agreement and ultimately formalized by an amendment to the F&A Agreement.

- **REFUNDABLE DEPOSITS**

The Auditor-Controller found that the developer had submitted reimbursements for refundable deposits totaling \$387,000. At the July 22 Board meeting, the developer stated these deposits were allowable because they related to certain infrastructure improvements. However, at the July 28 meeting, after review of supporting documentation, the developer acknowledged that his staff had indeed submitted requests for reimbursements of refundable deposits that were not allowable. The developer stated that this was done in error and that he could provide supporting documentation for expenditures related to the infrastructure improvements, which he cited at the Board meeting.

- **INELIGIBLE EXPENDITURES**

In the audit, the Auditor-Controller identified \$117,000 of expenditures that it determined were not eligible for reimbursement, either under Mello-Roos or Board policy. The majority of these, approximately \$82,000 (70 percent), were related to security services provided to the developer. At the July 22 Board meeting, the developer stated these expenditures were eligible because they were necessary to protect the physical improvements from vandalism. The developer subsequently agreed to provide supporting documentation regarding this statement for our review, including, but not limited to, reports of vandalism.

- **UNSUPPORTED/INADEQUATELY SUPPORTED COSTS**

In the audit, the Auditor-Controller was unable to determine the permissibility or appropriateness of \$785,000 in expenditures because they were not supported or were inadequately supported. At the July 28 meeting, the developer stated that he intended to make reasonable efforts to obtain the supporting documentation and submit it for review.

- **INVOICE OVER-RECOVERIES**

In the audit, the Auditor-Controller identified \$289,000 in invoice over-recoveries or requested reimbursements that exceeded the invoice amount. For example, in one instance, the developer allocated an invoice totaling \$131,011 between two expenditure categories and in two different reimbursement requests. However, when the Auditor-Controller summed the individual reimbursement amounts requested, the total was \$223,361, which resulted in an over-recovery of \$92,350.

Although the developer did not take exception to this finding at the Board meeting, we discussed it with the developer at our July 28 meeting. The developer stated that although he had not yet completed his review of the supporting documentation, his preliminary assessment indicated that the audit finding was generally correct, and that his staff did not have procedures in place to ensure they were correctly allocating expenditures.

- **CONCLUSION**

The developer stated that he will make his best efforts to submit the supporting documentation discussed at the July 28 meeting within the next 20 days. (The developer stated planned staff vacations for the first two weeks of August prevent him from submitting it sooner.) Public Works and the Auditor-Controller will review this information and provide a final report to your Board by September 15, 2003.

Therefore, the developer, ourselves, County Counsel, and the Auditor-Controller would like to request an additional 45 days to allow Mr. Foley to review the details of the audit,

Each Supervisor
August 5, 2003
Page 5

compile all relevant documents, submit these documents for our joint review, and allow each of us to the opportunity to clarify any questions we may have about the documents.

NDN:lh

O:\Section\Permits\Admin\LaVinaBoardResponse

cc: Brookfield Homes
Auditor-Controller
Chief Administrative Office
County Counsel
Executive Office
Regional Planning